

ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NIMKOFF ROSENFELD & SCHECTER, LLP

Plaintiff,

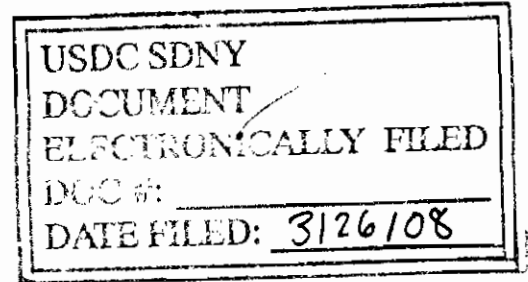
-against-

RKO PROPERTIES, LTF, et al,

Defendants.

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DEBORAH A. BATTIS, United States District Judge.

07 Civ. 7983 (DAB)  
ORDER



The Court is in receipt of correspondence from the Defendant, dated October 23, 2007, responding to a letter submitted by Plaintiff, dated October 12, 2007.

Plaintiff's letter requests a pre-motion conference to seek permission to move to disqualify Defense counsel under New York's witness-advocate rule. See 22 NYCRR 1200.2. "The fact that an opposing party intends to call an attorney as a witness is not dispositive; rather, '[d]isqualification may be required only when it is likely that the testimony to be given by the witness is necessary ... [a] finding [that] takes into account such factors as the significance of the matters, weight of the testimony, and availability of other evidence.'" Nicola v. Barrett, 840 N.Y.S.2d 677, 679 -680 (N.Y.A.D. 2007).

Inasmuch as Plaintiff does not cite any authority for the proposition that such a showing could be made at this stage of

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the litigation, before even limited discovery, this request is DENIED.

Additionally, by letter dated February 28, 2008, counsel requests that this matter be referred to Magistrate Judge Henry B. Pitman for the scheduling of discovery proceedings.

It is the practice of this Court that court-ordered discovery shall not commence until after the disposition of any motions to dismiss. This is a prudent and efficient use of time and effort. However, to the extent that the Parties are willing to proceed among themselves with discovery voluntarily, they may do so at any time. Accordingly, counsel's request for reference to Judge Pitman is DENIED.

SO ORDERED.

Dated: New York, New York  
March 26, 2008



Deborah A. Batts  
United States District Judge

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